

MEMORANDUM OF LAW

DATE: December 18, 1986

TO: Cheryl Fisher - Equal Employment
Investigating Officer via Rich Snapper,
Personnel Director
FROM: City Attorney
SUBJECT: Release of San Diego Police Department
Investigative Report

You recently asked this office to review a copy of a San Diego Police Department (SDPD) investigative report prepared by the Equal Opportunity Officer of the Equal Employment Division of the SDPD. You indicated that the California Department of Fair Employment and Housing requested a copy of this report in order to determine the validity of a complainant's allegations and to assess the adequacy of the City of San Diego's settlement offers. You also stated that the state is willing to accept the report with all names removed except that of the complainant. You asked for an opinion concerning the City's obligation to release this document which contains information related to the complainant's allegations of sexual harassment, sexual discrimination and inappropriate behavior by numerous members of the SDPD.

California Penal Code section 832.7 indicates:

Peace officer personnel records and records maintained pursuant to section 832.5 or information obtained from such records are confidential and shall not be disclosed in any criminal or civil proceedings except by discovery pursuant to Section 1043 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of police officers or a police agency conducted by a grand jury or a district attorney's office.

The particular investigative report prepared by the Equal Opportunity Officer in this case is clearly not a record of a citizen's complaint pursuant to section 832.5 of the Penal Code. However, section 832.8 defines "personnel records" as that term is used in section 832.7 as

Any file maintained under that individual's name by his or her employing agency and containing records relating to:

(emphasis added)

- (a) Personal data, including marital status, family members, educational and employment history, or similar information;
- (b) Medical history;
- (c) Election of employee benefits;
- (d) Employee advancement, appraisal, or discipline;
- (e) Complaints or investigations of complaints concerning an event or transaction in which he participated or which he perceived and pertaining to the manner in which he performed his duties, or
- (f) Any other information or disclosure of which would constitute an unwarranted invasion of personal privacy.

Under the facts as you described them, the document in question is not, at the present time, a file "maintained under that individual's name" for the purposes set forth in section 832.7. Of course, once any document is maintained under the name of an individual peace officer for any of the reasons in section 832.7 then it may not be disclosed, with or without the individual names removed, except by discovery pursuant to section 1043 of the Evidence Code.

You should also be aware that while this document may be exempt from public disclosure pursuant to either section 6254(c) of the Government Code (personnel records, the disclosure of which would constitute an unwarranted invasion of personal privacy) or 6254(f) (investigations of local police agencies) nothing in the California Public Records Act prohibits its public

disclosure when disclosure is in the best interest of the City. *Berkeley's Police Officers Assn. v. City of Berkeley*, 76 Cal.App.3d 931, 143 Cal.Rptr. 255 (1977). Under appropriate circumstances, such as you have described, the City is authorized to release the document in the manner requested.

However, we also advise you that because this investigative report is currently being used to resolve a charge of misbehavior by City of San Diego employees, we believe it to be a "file used for personnel purposes" by The City of San Diego as that term is used in article 41, section VII of the current Memorandum of Understanding between the San Diego Police Officers Association and The City of San Diego. That section reads in part

VIII. Personnel Files

No public safety officer shall have any

comment adverse to his interest entered into his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating that he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.
(Emphasis added.)

In addition, if at any time this document is placed into any one of the accused officer's personnel file, it not only becomes a "personnel record" with the meaning of section 832.7 of the Penal Code, it become "punitive action" as that term is defined in article 41, section IV of the Memorandum of Understanding. The concerned officer is then entitled to an administrative appeal concerning its placement into his or her personnel file. Hopson v. City of Los Angeles, 139 Cal.App.3d 347, 188 Cal.Rptr. 689 (1983).

In summary, once the procedures in article 41, section VII have been completed, you may release a copy of this particular report, in the format requested, to the Department of Fair

Employment and Housing, if you believe it to be in the best interest of The City of San Diego. However, absent a valid subpoena duces tecum, you are under no legal obligation to do so.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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